

Remarks/Arguments

This Amendment and response is submitted in a timely fashion within the three-month Shortened Statutory Period set for response to the Examiner's Official Action mailed August 1, 2002. No extensions of time are required.

The amendments to the claims and the specification have been made without any addition of new matter. Full support for the amendments can be found in the specification, including the claims, as originally filed. Entry of the amendments is hereby respectfully requested.

Claims 1 through 6 and 8 through 19 remain in this application. Claim 7 has been cancelled. Claim 7 has been incorporated into claim 1. Claims 1 through 6 and 8 through 19 have been amended to overcome the rejection under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a) as being anticipated and obvious according to Cunliffe (U.S. Patent No. 5,966,742) and to avoid an anticipation and/or rejection according to Whang (U.S. Patent No. 6,199,213).

A. 35 U.S.C. §102 (b) Anticipation Rejection

MPEP § 2131 provides:

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. Of Cahornia*, 814 F.2d 628,631,2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as contained in the claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim.

In section 2 of the January 8, 2002 office action, the Examiner rejects claims 1-4, 10, 11, 12 and 16-19 under 35 U.S.C. §102 (b) as being anticipated by Cunliffe (5,966,742).

If the prior art reference relied upon by the examiner in a 35 U.S.C. §102 (b) rejection does not contain every element recited in the claim in as complete detail as is contained in the claim and arranged as recited in the claim, the rejection should be traversed as being improper.

Applicant respectfully submits that contrary to the Examiner's statement that all elements are disclosed in the Cunliffe reference, the band element is not capable of supporting the bill without the structural rigidity provided by the crown portion, so the band and crown elements of Cunliffe must be taken together and not separated as suggested by the Examiner. Therefore the loop element is not present in Cunliffe and the rejection is unsupported by the art and should be withdrawn.

Cunliffe states, "preferably, the gores forming the front part of the crown portion are of substantially non-stretchable, more rigid material, whereas the gores forming the rear part of the cap are of stretchable material, permitting stretching in this region to accommodate stretching of the rear portion of the peripheral band", at line 57 of column 1 and "the two panels 35,36 form the front of the cap, and are preferably of a relatively rigid or stiffened material to maintain the cap shape", starting on line 57 of column 2. The Cunliffe does not state why the front of the crown is preferably a "substantially non-stretchable, more rigid material." A bill is secured to the front of the crown structure. It is cantilevered out from the front of the crown structure. It is well known in the art that a visor is typically non-stretchable and relatively rigid. Figure 1 shows a flat visor. It is well known in the art that a visor can be either flat or bent into an arc giving it a

curved appearance when viewed straight on. A cantilevered structure in static equilibrium will produce a vertical load component and a bending moment component. The vertical load component is equal to the mass of the cantilevered structure. The bending moment component is equal to the vertical load component multiplied by the length of the moment arm. The bending moment component is measure in units of distance and mass, for instance, ft-lbs. In order for a structure to hold a cantilevered structure in static equilibrium, it must be stiff enough to provide a static reaction force capable of resisting the vertical load component and bending moment component. A bill, like any over cantilevered structure, will have a vertical load component and a bending moment component that must be reacted or distributed by the supporting structure for it to remain in static equilibrium. It is well known in stress analysis that as a structure becomes stiffer, it can react higher and higher vertical load component and bending moment loading. While the hypothetical person of ordinary skill in the art probably does not perform a stress analysis when designing a hat, it is well known that the leading edge of a visor that is not properly supported will droop down to obscure the vision of the wearer or cant upward at an extreme angle significantly reducing the shading capability of the visor and giving the wearer of the cap an un-sightful appearance. In United States patent number 6,199,213 (Whang), starting on line 50 of column 4 it states that, "the frontal panels 31 of the embodiments of the present invention as shown in FIGS. 2 and 3 may be constructed of more rigid material than either the flexible gores 20 or the outer portion 28 that encircles the head. This allows the headwear to support the visor 21 so it extends from the headwear." Applicant respectfully submits that Whang establishes that it is known in the art that the front of the crown of a cap must be made from a substantially more rigid material or stiff structure to "support the visor 21 so it extends from the headwear." The interconnected front portion of the Cunliffe crown of preferably a

“substantially non-stretchable, more rigid material” is required to properly support the visor and react the vertical load component and the bending moment component throughout the crown and into the wearer’s head.

Applicant respectfully submits that the “front portion is of multilayer construction, comprising a central core layer of porous, foam-like absorbent material and outer cover layers of fabric” (as stated in Cunliffe starting on line 65 of column 1), makes it more rigid than the back portion. When the relatively narrow front portion is combined with the stretchable back portion, the band does not have the structural rigidity to properly support the cantilevered visor. Cunliffe relies upon the crown to react the load induced by the visor into the wearer’s head.

Therefore, while Cunliffe does disclose a headband and a visor or bill portion, it cannot function properly without the support structure supplied by the crown. Cunliffe does not anticipate applicant’s device.

Applicant respectfully submits that contrary to the Examiner’s statement that all elements are disclosed in the Cunliffe reference, while Cunliffe does disclose a bill or visor, it does not disclose or claim a type of hat known in the art as a visor, so the rejection is unsupported by the art and should be withdrawn.

Applicant respectfully submits that while the drawings included with Cunliffe depict a bill or visor attached to the front of the crown of the cap, the type of hat known in the art as a visor is not disclosed or claimed. In Whang, starting on line 41 of column 4, it states that, “FIG. 3 shows a view of a visor-like hat that is one embodiment of the present invention. The visor-like hat has a visor 21 and an outer portion 28 that encircles the head.” In the BRIEF DESCRIPTION OF THE DRAWINGS section of Whang starting on line 1 of column 4, it

describes figure 3 as follows: "FIG. 3 shows a completed embodiment of the present invention in the form of a visor." Applicant submits that Whang discloses a type of hat that is well known to a person of ordinary skill in the art as a visor.

In the BRIEF DESCRIPTION OF THE DRAWINGS section of Whang starting on line 66 of column 3, it describes figure 2 as follows: "FIG. 2 shows a completed embodiment of the present invention in the form of a baseball cap." Applicant submits that the type of cap called a baseball cap in Whang is well known under that name to a person of ordinary skill in the art.

The Whang visor-like hat depicted in figure 3 has an open crown. The top of the wearer's head receives no protection from the elements. The hat disclosed by Cunliffe has a closed crown. The top of the head of the wearer of a Cunliffe cap receives protection from the elements. Applicant respectfully submits that the hat disclosed by Cunliffe has a baseball cap configuration.

Applicant respectfully submits that Cunliffe does not disclose "a self-sizing visor" as stated by the Examiner in section 2 of the August 1, 2002 Office Action and asks that this rejection be removed.

Applicant respectfully submits that contrary to the Examiner's statement that all elements are disclosed in the Cunliffe reference, the Cunliffe band element is formed from two parts and not one part, therefore the loop element is not present in Cunliffe and the rejection is unsupported by the art and should be withdrawn.

Cunliffe discloses, starting on line 6 of column 3, "thus, the rear, stretchable band portion has a length of approximately 1/3 that of the cap peripheral opening, while the front, sweat band portion has a length of approximately 2/3 of the length of the peripheral opening. This provides

sufficient adjustability while allowing maximum comfort to the wearer due to the extension of the sweat absorbent portion over the front and sides of the cap." The Cunliffe band has two parts. Each part is of a significantly different structure to satisfy significantly different wearer requirements.

Applicant respectfully submits that Cunliffe discloses a two-part band and not a one-part band and asks that this rejection be removed.

Applicant respectfully submits that contrary to the Examiner's statement that all elements are disclosed in the Cunliffe reference, Cunliffe discloses a multilayer, non-stretchable sweat absorbing material in the front of the visor, so the rejection is unsupported by the art and should be withdrawn.

Cunliffe discloses starting on line 65 of column 1, "while the front portion is of multilayer construction, comprising a central core layer of porous, foam-like absorbent material and outer cover layers of fabric." The band is located along the inside peripheral edge of the crown. This would place it behind the visor. Applicant respectfully submits that a central core with outer cover layers of fabric located behind the visor does not support the Examiner's contention that Cunliffe discloses a multilayer sweat absorbing material in the front of the visor asks that this rejection be removed. The front portion of Cunliffe's band does not stretch. It does not compress against the head of the wearer because it is wrapped in "outer cover layers of fabric" and therefore does not affect the fit of the cap.

In claim 4, Applicant claims "a sweat absorbing foam liner being attached to said inner surface of said headband to facilitate a comfortable snug fit." Applicant's foam liner performs two functions. It absorbs sweat. It also increases the comfort of the fit of the cap. The foam will

softly compress against the head of the wearer to provide another means of fitting the visor to various head sizes and shapes.

Applicant respectfully submits that the front portion of the Cunliffe band does not perform the dual function of sweat absorption and facilitating "a comfortable snug fit" and asks that this rejection be removed.

Applicant respectfully submits that while Whang (United States patent number 6,199,213) discloses and claims a visor-like hat, the combination of the stretchable sweatband sewn to the inner surface of an "outer portion" fabricated from non-stretchable, ordinary fabric orientated in a way that provides some natural stretch does not anticipated each and every element as set forth in applicant's device, so a rejection based upon Whang is unsupported by the art.

In forming their opinion on Appeal No. 96-3012 of Application Serial Number 08/202,975, the Board Of Patent Appeals And Interferences of the United States Patent And Trademark Office used the following definition for a sweatband on page 6 starting on line 2:

"a band lining the bottom of the inside of the crown of a hat or cap to protect it against sweat from the head " as defined in The Random House College Dictionary (1973).

Whang discloses, starting on line 47 column 4, that "the lower edge 29 of the sweatband 26 is attached to the inside of the lower peripheral edge 23 of the outer portion 28 of the invention. Figure 3 also shows a sweatband attached on the inside of the outer portion starting from the lower peripheral edge. Whang discloses, starting on line 60 column 2, that "additionally, the polyester and polyester/SPANDEX blend materials of the sweatband of the present invention are more absorbent than the uni-axial elastics of the current state of the art

which incorporate rubber. Therefore, the Whang sweatband is a band lining the bottom of the inside of the visor-like cap to protect it against sweat from the head. Applicant does not disclose a sweatband.

Whang discloses, starting on line 12 column 4, a sweatband "composed of an interior core 14 and an exterior shell or layer 15. The interior core 14 may be made of polyester. The exterior shell or layer 15 may be made of a mix of cotton and spandex." Applicant does not disclose a loop with a core and an exterior shell.

The Whang sweatband is sewn to the inside surface of the "outer portion". Whang discloses, starting on line 44 column 4, that "the flexible stitching 30 of the sweatband 26 is arranged circumferentially." Applicant does not disclose a loop with a core and an exterior shell sewn to the interior of the "outer portion."

Whang discloses a visor-like hat with an "outer portion" made of non-stretchable "bias cut fabric aligned at varying angles to achieve the maximum natural multi-axial stretch of said fabric" (Whang line 10 column 3). Whang states that an advantage of using ordinary cloth (line 1 column 3) is that, "the gores of the cap structure use existing and unaltered materials which do not have elastics incorporated therein. Instead, the flexibility of the cap structure comes from manner in which the gores are aligned." The non-stretchable fabric will allow limited expansion of the "outer portion." The non-stretchable fabric of the "outer portion" provides no contraction capability. The sweatband is attached to the outer portion by 4 circumferential rows of evenly spaced stitching. Whang relies upon the sweatband stitched to the inside of the "outer portion" to provide contraction for a "snug, comfortable and non-oppressive fit". Separately, the sweatband and the "outer portion" perform two different functions. Applicant does not disclose two separate band structures each performing a different function.

Whang does not anticipated each and every element as set forth by applicant, so a rejection based upon Whang is unsupported by the art.

Attached hereto is a marked-up version of the changes made to the claims by the current amendment. The attached page is captioned "Version with markings to show changes made."

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

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Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW THE CHANGES MADE

In the Claims:

Claim 1 has been amended as follows:

1. A self-sizing sun visor, comprising:

[a headband being provided, said headband having] one or more layers of material being provided, said one or more layers of material [headband being shaped as an elongated four edge band and] having an upper edge, a lower edge, a first edge, a second edge, a forward [headband] midpoint, an inner surface, an outer surface and a first predetermined width[, said headband being constructed from one or more elongated rectangular pieces];

said first edge of said one or more layers of material [headband] being attached to said second edge of said one or more layers of material [headband], thus forming a [headband] loop with an inner surface, an outer surface and a circumferential linear extent of a first predetermined length, loop [headband] having an upper peripheral edge and a lower peripheral edge; [and]

said loop being made from a stretchable cotton and spandex blend.; and

a bill [visor] of an essentially rigid nature being attached to said forward portion of said lower peripheral edge.

Claim 2 has been amended as follows:

2. A self-sizing sun visor according to claim 1 wherein said loop [headband] being at least uniaxially stretchable.

Claim 3 has been amended as follows:

3. A self-sizing sun visor according to claim 1 wherein said loop [headband] being at least biaxially stretchable.

Claim 4 has been amended as follows:

4. A self-sizing sun visor according to claim 1 wherein a sweat absorbing foam liner being attached to said inner surface of said loop [headband] to facilitate a comfortable snug fit.

Claim 5 has been amended as follows:

5. A self-sizing sun visor according to claim 1 wherein said first predetermined length of said loop [headband] being a short length sized to fit small to medium size heads comfortably.

Claim 6 has been amended as follows:

6. A self-sizing sun visor according to claim 1 wherein said first predetermined length of said loop [headband] being a long length sized to fit large to extra large size heads comfortably.

Claim 7 has been cancelled.

Claim 8 has been amended as follows:

8. A self-sizing sun visor according to claim 1 wherein said first predetermined width of said loop [headband] decreases from a maximum width at said forward [headband] midpoint [to a minimum width at the aft midpoint of said headband].

Claim 9 has been amended as follows:

9. A self-sizing sun visor according to claim 1 wherein said first predetermined width of said one or more layers of material [headband] increases from a maximum width [at the aft headband midpoint] to a minimum width at said forward midpoint[of said headband].

Claim 10 has been amended as follows:

10. A self-sizing sun visor according to claim 1 wherein at least one edge of said loop [elongated four-edge band] being curvilinear.

Claim 11 has been amended as follows:

11. A self-sizing sun visor according to claim 1 wherein at least one edge of said loop [elongated four-edge band] being straight.

Claim 12 has been amended as follows:

12. A self-sizing sun visor according to claim 1 wherein said loop [elongated four-edge band] being created from one or more [headband] segments, said [headband] segment having [being shaped as an elongated four edge band with] an upper edge, a lower edge, a first edge, and a second edge and a first predetermined width; said first edge of said [headband] segment being attached to said second edge of an adjacent said [headband] segment and so forth to create a closed loop, [a] one or more piece, one or more layer said loop [headband], said loop [headband] having an inner surface, an outer surface and a circumferential linear extent of a first

predetermined length.

Claim 13 has been amended as follows:

13. A self-sizing sun visor according to claim 4 wherein said sweat absorbing foam liner being attached to said inner surface of said loop [headband] with stretchable thread.

Claim 14 has been amended as follows:

14. A self-sizing sun visor according to claim 12 wherein a said [headband] segment being a different color from the other said [headband] segments.

Claim 15 has been amended as follows:

15. A self-sizing sun visor according to claim 12 wherein a said [headband] segment being the same color as the other said [headband] segments.

Claim 16 has been amended as follows:

16. A self-sizing sun visor according to claim 12 wherein a said [headband] segment being sweat absorbent or non-sweat absorbent.

Claim 17 has been amended as follows:

17. A self-sizing sun visor according to claim 12 wherein said loop [headband] being capable of construction of a mixture of more than two said [headband] segments, said mixture including a uniaxially stretchable segment, a biaxially stretchable segment and or non-stretchable segment.

Claim 18 has been amended as follows:

18. A self-sizing sun visor according to claim 12 wherein at least one edge of said loop
[elongated four-edge band] being curvilinear.

Claim 19 has been amended as follows:

19. A self-sizing sun visor according to claim 12 wherein at least one edge of said loop
[elongated four-edge band] being straight.